

# **City of York Council**

## **Examination of the City of York Local Plan 2017-2033**

### **Matters, Issues and Questions for the Examination - Phase 1 Hearings**

#### **Comments on Matter 1 of MIQs.**

**George E Wright MA MRTPI**

(RESPONDENT REF: 833 COMBINED)

In association with

**Jennifer Hubbard BA (Hons) T&CP**

**Examination of the City of York Local Plan 2017-2033.**

**Statement on M1Qs - Phase 1 Hearings**

**Matter 1 – Legal requirements.**

1. This Statement is made by George E Wright MA MRTPI within the terms of matters raised in his Response to the Consultation of the 04.04.2018 (Ref:833 Combined) and the Response to the Proposed Modifications Consultation, June 2019. The Statement has been prepared in association with Jennifer Hubbard BA(Hons) Town and Country Planning.

**Preliminary Issue**

2. I consider that the legal requirements of a Local Plan require the Inspectors to assess compliance with four specific sections of the PCPA 2004, namely:

- Sec 17 – The Plan Content
- Sec 19 – That the Plan is prepared in accordance with certain matters such as the LDS & SCI and has been subject to Sustainability Appraisal.
- Sec 24 (1) – Conformity with Regional Strategy and
- Sec 33A – Compliance with the requirements of the Section in respect of the Duty to Cooperate.
- Sec 39 (2) – Compliance with the requirement to contribute to the achievement of sustainable development.

3. I have indicated concerns in my Responses related to Sec. 24 (1) and Sec. 33A and 39 (2) and this statement is restricted to those three legal requirements.

4. However, in my opinion, there is a tension between matters of law and matters of policy. The tension arises in this context with regard to Sec 33A and Sec 39 (2) in respect of the role of

Sustainability Appraisal (which might then also relate to Sec. 19), evidence and reasonable alternative considerations of strategy. These three factors also relate to the soundness assessment.

5. My understanding is that the usual practice is to consider these three factors in relation to the soundness assessment but it is also clear there is a consideration that these factors are relevant to the fulfilment of the legal requirement of the Plan. However, that consideration may be more restricted than in the context of a soundness assessment. I consider the issues of the evidence base and reasonable strategic alternatives also require discussion under Matter 3 as to the issue of soundness.
6. I regret I am not aware of any Court ruling on the interpretation of the terms and ambit of Sec. 33A or Sec 39 (2) in this respect. In respect of the legal requirement for Sec 33A is expressed as *'engaging constructively, actively and on an on-going basis having regard to the activities of the (adjacent Local Authorities).'* Equally, I am not aware of any ruling that determines the minimum requirement to satisfy the *'achievement of sustainable development.'*

#### **Duty to Cooperate. Questions 1.1 to 1.5**

##### **Q1.1**

7. This question has two parts, the first to identify the strategic issues and the second on how it has been addressed.
8. In answer to the first part, I submit to the Inspectors that the Green Belt policies and Green Belt proposals of the Plan are all strategic considerations.
9. Whilst the Outer boundary issue is a clear-cut cross-boundary matter, I also submit that so are the inner boundary and the inset settlement boundaries and their status. Taken as a whole, these are strategic matters because they impact upon the delivery of sustainable patterns of

development. These issues have a material impact on the supply of development land which is in sustainable locations. The ability of York to meet its own requirements, having regard to the transport connections to the adjoining LPA Districts, is of strategic concern to the adjoining authorities. I would also submit that each element is a strategic consideration.

10. In answer to the second part, the strategy has been addressed in the Plan by taking the 1990/1991 NYCC York Green Belt Local Plan as a baseline. This same approach has been taken by the adjoining LPAs when they have addressed the YGB in their local plans. That approach is fundamentally flawed as I have set out in detail in my Responses but the key points are:

- The 1990/91 Plan was not evidenced based and was not the subject of a soundness assessment,
- The overarching strategic policy is now different and the current strategic policy stipulates only a single purpose for the YGB.
- National policy has changed to embrace sustainable development and contains policy which highlights how that may be achieved such as para. 84 NPPF 2012.

#### **Q1.2**

11. The actions taken on this topic can be described as that the 1990/91 YGBLP baseline has been accepted as the sole strategic approach and that no alternative approaches have been considered. However, reasonable alternatives exist, for example:

- in the form of resolving the outer boundary having regard to the 6-mile radius. That was not done in the 1990/91 process but rather the starting base was old unadopted sketch plans unrelated to the strategic policy,
- in the form that the RSS Key Diagram indicated the inner boundary against a Diagram that depicted the actual existing urban form of the City rather than by reference to a blob or dot.

12. I would submit that the Inspectors should consider what actions would be expected to be reviewed by the Authorities in the Duty to Cooperate exchanges that have not occurred – for example discussions about evidence to support proposals for positioning boundaries, consideration of reasonable alternatives strategic approaches, the impact of the policy changes at Regional and National level on the pre – 2008 proposals, as examples, the greater clarity provided by the RSS Key Diagram.

**Q1.3**

13. The outcome of the dialogue between the respective Authorities are simply a failure to achieve a fulfilment of the Statutory requirement. The failure must essentially rest with York, as the YGB is for the City's benefit and it should have led the discussions, produced an evidence base appropriate to the Strategic policy and the changes in National policy, that generate discussion upon the outer, inner and inset boundaries and alternative strategies for these.
14. In summary the outcome in relation to green belt policies and proposals flags up the failure to satisfy the statutory requirement of the Duty to Cooperate. The absence of discussion is the absence of the fulfilment of the Duty.

**Q1.4**

15. Whilst the Plan addresses the outcomes of the limited dialogue and consideration of the Duty to Cooperate process, the outcome does not arise from a '*constructive, active and on-going process.*' The outcomes are not ones which produce a sustainable pattern of development for York. The outcomes impact on two or more planning areas. As such the legal requirements are not met under 24 (1) or 39 (2).

## Q1.5

16. The duty to cooperate has not functioned in relation to the strategic issues arising from the Green Belt proposals that would create a sustainable pattern of development and so, although the process has been undertaken, it has not been undertaken in a meaningful way that is required under the legislation to be constructive or aimed at sustainable patterns of development.
17. The Planning Practice Guidance sets out a process where evidence is gathered and alternative strategies are reviewed (usually against preferred options) through the Duty to Cooperate. Regardless of earlier discussions that process would begin in January/February 2013 with a fresh start, when the final form of the policy was prescribed in the Partial Revocation Order (PRO). There would then have been another evidence gathering process related to the outcome of that initial act of cooperation (had it been a valid one). That would have led to the formulation of appropriate policies and proposals for publications. Both stages would have a Sustainability Appraisal and the Second Sustainability Appraisal would conclude the process i.e. February 2018.
18. I have had specific regard to the period from May 2008 to February 2018 in respect of the consultations in the Duty to Cooperate process. That period is greater than the timescale of the overarching policy of the PRO but covers the period since the single purpose of the YGB was prescribed. The only consideration of alternatives was a consideration as to whether the purpose should be that set out in the RSS or whether the purposes of Green Belt in the NPPF should be the baseline. This was in 2013. It was as such an irrelevant consideration not a reasonable alternative, as the overarching Regional Strategy of the PRO set out the purpose and the Plan had to be in general conformity with it.
19. Reasonable and obvious alternatives would be:

- To consider an outer-boundary at or near to the 6-mile radius.
- To consider an inner boundary at or near the inner boundary indicated by the Key Diagram of the RSS
- Boundaries that provided an area of 50,000 acres (20,234 ha) as identified by the Secretary of State against a 6-mile outer radius in 1988 (long before any locally generated plan was formulated).
- That the Strays should be Green Wedges not Green Belt.

20. There should have been an appropriate and up-to-date evidence base relevant to:

- The identification of land outside the urban core which had a positive and material role in preserving the setting and character of the historic City. Although York did hold this evidence from ECUS in December 2000, it has never been shared with the adjoining authorities. This was also the evidence that Historic England had been requesting since the 1998 Local Plan fiasco.
- Assessing the role of inset settlements in terms of their status for matters such as growth, limited in fill or being washed over again is a matter which does not have an evidence-based assessment and has not been discussed with the adjoining authorities.

21. Had those matters been identified then assessed for weight in a balance that considered whether providing sustainable development land in accordance with para. 84 of the NPPF outweighed (or not) the benefit of Green Belt provision considered necessary to fulfilling the purpose of preserving the character and setting of the City, appropriate active discussion would arise. Such an evidence base does not exist and what evidence has been produced has pre-supposed inappropriate constraints like preventing coalescence with immediately outlying villages.

**Other Legal Requirements. Questions 1.6 – 1.11.**

**Q1.6** [I have no comment, I did not raise this issue in my Responses].

**Q1.7**

21. The answer in relation to Green Belt policies and proposals is **NO**.
22. The Inspectors MIQs refer to the Sustainability Appraisals as CDO 9, 10 and 11. I consider the relevant SAs to be those at CDO 8 (February 2018) CDO 11 (April 2018) SDO 07A (June 2013) SDO 11A (2014) SDO 20 (July 2016) SDO 23 (Sept 2017).
23. The SA CD08 considers alternatives in relation to allocations not Green Belt proposals. CD011 Likewise. The alternatives considered in SDO 11A (2014) reviews matters back to 2006 (i.e. before the Green Belt policy of the RSS May 2008). It reviews alternative approaches to allocations at various dates between 2006-2014 but there is no question of alternative applications of Green Belt policy and no reference to the overarching policy as to general extent (defining for the first time, the purpose). SDO 20 contains no reference to alternatives but in any event only focussed on sites. SDO 23 only reviews alternatives in respect of site allocations.
24. Whilst the LPA have been obsessed with considering alternative development sites, it has neither during the critical policy period (May 2008 – to date , a period when a purpose is attributed to the YGB for the first time and the prevention of coalescence as a policy had been abandoned) or since the LPA's formation in 1996 has it ever considered alternative proposals for the YGB in terms of boundaries and extent. It has at all times adopted an approach based on the 1990/1991 Green Belt Local Plan, varied only by subsequent acts of development.

**Q.1.8** [This is not an issue addressed in my Responses].



**Q.1.9 Does the Plan comply with other relevant legal requirements?**

25. Again, the answer is **NO**. I specifically direct that response to Section 24 (1) P&CPA2004 but also to Section 39 (2).
26. A legal requirement, with which the Plan has to comply, is set out in Sec 24 (1) of PCPA 2004. That requires the Plan to be **in general conformity** with the Regional Strategy (my emphasis).
27. The saved policy of the RSS set out in the PRO 2013 and the RSS Key Diagram are with which the CoYC LP has to be in general conformity with, as that is Regional Strategy for these purposes.
28. The Saved Policy of the RSS prescribes that the outer boundary shall be about 6 miles from the City Centre and the Key Diagram indicates the inner line of the general extent of the YGB is beyond the main built up area by some discernible distance. There is no attempt by the LPA for the Plan to be in general conformity with those policy requirements.
29. The Local Plan provides for a Green Belt that both:
- Goes significantly and materially beyond the 6-mile outer radius prescribed by the Saved Policy, and
  - Goes significantly and materially within the inner limit of the General extent shown on the Key Diagram. It creates a tight Green Belt up to the existing urban core (subject only to proposed development land allocations) and penetrates within the Core in the form of the Strays.
30. The LPA's Justification is partial based on preventing coalescence with nearby settlements. That policy was expressly abandoned by the Regional Strategy and therefore the proposals are not in **general conformity** on that issue also.
31. I recommend the Inspector's review the Key Diagram for 1980, the RSS and the submitted Plan.

32. Many if not all the surrounding authorities had Local Plans approved in the period between 1996 and 2008. These would relate to the Key Diagram in 1995. This was plainly inaccurate as to the outer boundary. Whilst that is a bit of a mess, all these authorities review their plans regularly (unlike York). However, the YGB is to serve the historic City and it should be the lead authority on the topic. Should it address its outer boundary correctly and engage in a meaningful dialogue in Duty to Cooperate process the other authorities it will within the foreseeable future be able to correct the error caused by the County Council in 1995 in the adjoining authorities plans as to the outer boundary of the YGB.
33. In consequence, I invite the Inspectors in respect of the YGB to find that the policies and proposals in relation to Green Belt are not in general conformity of the Regional Strategy as required by Sec. 24 (1) PCPA 2004. Further the consequence of that is no modification can render the Plan sound.
34. The clear outcome of providing a Green Belt which is not tight to the existing urban core would be that development land would be available adjacent to the urban core (or significant parts of it) and thus allows an LP to deliver sustainable patterns of development as envisage in Para 84 of the NPPF. The submitted Plan raises the question as to whether the Plan proposals also fail to comply with Section 39 (2) P&CPA 2004.

**Q.10 & Q.11.** [These are not matters addressed in my Responses].

**George Wright MA MRTPI**

**November 2019.**